

Internal Revenue Service
memorandum

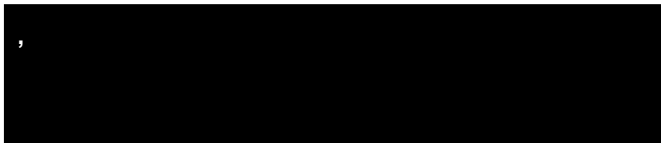
date: JAN 22 1991

to: Director, Internal Revenue Service Center
Kansas City, MO
Attn: Entity Control

from: Technical Assistant
Employee Benefits and Exempt Organizations

subject: CC:EE:3 - TR-45-1484-90
Railroad Retirement Tax Act Status

Attached for your information and appropriate action is a copy of a letter dated November 2, 1990, from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Tax Act of the:



We have reviewed the opinion of the Railroad Retirement Board and, based solely upon the information submitted, concur in the conclusion reached by the Board that [REDACTED] is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

(Signed) Ronald L. Moore

RONALD L. MOORE

Attachment: Copy of letter from
the Railroad Retirement Board

cc: Mr. Gary Kuper
Internal Revenue Service
200 South Hanley
Clayton, MO 63105

008882

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 RUSH STREET
CHICAGO, ILLINOIS 60611

BUREAU OF LAW

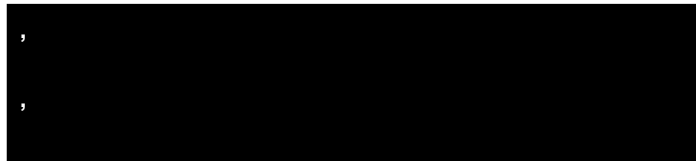
Assistant Chief Counsel
(Employee Benefits and
Exempt Organizations)
Internal Revenue Service
1111 Constitution Avenue., N.W.
Washington, D.C. 20224

NOV 02 1990

Attention: CC:IND:1:3

Dear Sir:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:



Sincerely yours,

A handwritten signature in cursive script, appearing to read "Steven A. Bartholow".

Steven A. Bartholow
Deputy General Counsel

Enclosure

MEMORANDUM

OCT 31 1990

TO: Director of Research and Employment Accounts

FROM: Deputy General Counsel

SUBJECT: [REDACTED] d/b/a [REDACTED]
[REDACTED] - [REDACTED]

This is in reply to your Form G-215 request of March 15, 1990, as to the status of the employees of [REDACTED], under the Railroad Retirement and Railroad Unemployment Insurance Acts. As discussed below, I have determined that these individuals are not covered employees within the meaning of the Acts.

The evidence in file is that [REDACTED] first contracted with the [REDACTED] in [REDACTED] to transport train crews in the [REDACTED] and [REDACTED] areas. At that time, he did business as sole proprietor of "[REDACTED] doing business as [REDACTED]", with [REDACTED] passenger van trucks. On [REDACTED], [REDACTED] ([REDACTED]'s) incorporated, with the corporation's stated purpose as merely being any lawful business. No railroad owns any equity interest in [REDACTED]'s, and no officer of [REDACTED]'s is also on the staff of a railroad employer.

The Interstate Commerce Commission granted [REDACTED]'s a certificate of public convenience and necessity to operate as a common carrier by motor vehicle. See: [REDACTED], [REDACTED], (Service date [REDACTED]). [REDACTED]'s obtained charter motor bus carrier authority from the Minnesota Transportation Regulation Board, (In Matter of Petition of [REDACTED], MTRB Docket No. CHTR [REDACTED], [REDACTED]), but was denied motor common carrier authority in Nevada because [REDACTED]'s entry would adversely affect certain small town cab companies (In Matter of [REDACTED], d/b/a [REDACTED], Public Service Commission of Nevada Docket No. [REDACTED], [REDACTED]). Information provided by [REDACTED]'s indicates that it operates in [REDACTED] additional states as well.

Since the first contract in [REDACTED] with the [REDACTED]'s has obtained contracts with the [REDACTED], the [REDACTED], the [REDACTED], the [REDACTED], and [REDACTED].

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██████'s describes the services provided under all those contracts as the local and long distance transportation of train crews between railroad yards or off-duty crew lodging quarters to rail yards or to a point along the right-of-way where a train crew must be relieved from duty. These contracts account for approximately █████ percent of █████'s revenue, the balance arising from similar service for airlines and from private bus charters.

██████ representative contracts with different clients both specify that █████'s is to transport the client railroad's crews, on the one hand within specified state borders, on the other between specified locations on attached route maps. Both require █████'s to furnish and maintain a sufficient number of █████-passenger vehicles, with drivers, to meet the railroad's needs. █████'s must comply with legal requirements, indemnify the railroads from liability, and maintain liability insurance. The railroad clients agree to compensate █████'s per mile or per trip, whichever is greater, with additional charges for delays caused by the client. Both contracts forbid █████'s from carrying passengers who are not employees of the client while transporting the railroads' crews. Both contracts run for a set term (██████ year or █████ years), and may be terminated on █████ days notice by either party. In addition, the railroad clients may terminate both agreements for non-performance by █████ by █████ day's written notice.

██████'s currently owns a fleet of █████-passenger van trucks used in this business. █████'s hires, fires, and trains its drivers in vehicle inspection, operating logs, and safety procedures. Drivers receive instructions from █████'s area managers as to where to pick up passengers. Drivers are not subject to the authority of clients to supervise and direct the manner in which they do their work. A driver may perform service for more than one customer as time permits. █████'s compensates drivers hourly for local service, and by mileage for long distance service.

With respect to the definition of a covered employer, section 1(a)(1) of the RRA (45 U.S.C. § 231(1)(a)(1)), insofar as relevant here, provides that:

"The term 'employer' shall include--

"(i) any express company, sleeping-car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;"

"(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of

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this subdivision and which operates any equipment or facility or performs any service (other than trucking service, casual service, and the casual operation of equipment and facilities) in connection with the transportation of passengers or property by railroad * * *."

Sections 1(a) and 1(b) of the RUIA (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (RRTA) (26 U.S.C. §§ 3201-3233).

With regard of employees, section 1(b) of the Railroad Retirement and 1(d) of the Railroad Unemployment Insurance Acts both define a covered employee as an individual in the service of an employer for compensation. Section 1(d)(1) of the Retirement Act further defines an individual as "in the service of an employer" when:

"(i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and

(ii) he renders such service for compensation * * *."

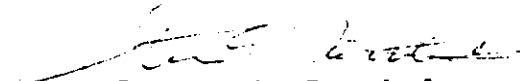
Section 1(e) of the RUIA contains a definition of service substantially indetical to the above, as do sections 3231(b) and 3231(d) of the RRTA (26 U.S.C. §§ 3231(b) and (d)).

No railroad owns any interest in [REDACTED]'s; nor does [REDACTED]'s share any officers with any railroad employer. Consequently, [REDACTED]'s is not under common control with a rail carrier employer, and is therefore not itself a covered employer under the Acts. Further, the evidence establishes that [REDACTED]'s is engaged in the business of transporting passengers as a common carrier by motor vehicle. [REDACTED]'s has taken necessary steps to license itself in this trade, and has made a significant investment in passenger vehicles. [REDACTED]'s maintains the direction and control of its drivers while performing this service for several clients over a wide geographic area. It is therefore my opinion that the drivers providing the passenger transportation service under [REDACTED]'s contracts with its railroad clients are not employees of those railroads within the meaning of the Acts.

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A Form G-215 giving effect to the foregoing is attached.


Steven A. Bartholow

Attachment